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**FEB 13 2004**

In re Application of  
Haruyuki Suzuki  
Application No. 10/618,722  
Filed: July 15, 2003  
For: OPTICAL RECORDING/REPRODUCING  
METHOD AND APPARATUS

**OFFICE OF PETITIONS**  
**ON PETITION**

This is a decision on the petition filed November 20, 2003, requesting that the Notice of Omitted Items, mailed October 15, 2003, be withdrawn, which is treated as petition under 37 CFR 1.53.

A "Notice of Omitted Item(s) in a Nonprovisional Application" was mailed October 15, 2003, stating that the application had been accorded a filing date of July 15, 2003 but that Figures 3 and 4 appeared to have been omitted.

Petitioners concede that the failure to include Figures 3 and 4 with the other application papers was inadvertent but that the application as filed, included a statement incorporating by reference the prior application. Petitioner asserts that the instant application is a continuation of parent application no. 09/741,344 filed December 21, 2000 (now Patent No. 6,621,780 issued September 16, 2003), which included the drawings of Figures 3 and 4, and that the instant application contained a statement incorporating the parent application, including Figures 3 and 4, by reference.

MPEP 201.06 (c) states that:

For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

Obviously, in view of the incorporation by reference of the prior application, the drawings of Figures 3 and 4 are not new matter if it was a part of the disclosure of the prior application. New drawings may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See MPEP § 608.02(a).

Accordingly, the petition is **Dismissed**.

Since the present petition was not necessitated by any error on the part of the Office, the \$130.00 petition fee will not be refunded.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of July 15, 2003, with an indication in Office records that Figures 3 and 4 while not included with the application papers upon filing, was a part of the original disclosure.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

  
Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions